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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1967

No. 667

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION; and LOCALS 6, 10, 34, 54 and 91, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

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INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION and LOCALS 6, 10, 34, 54 and 91, INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION petition

for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, enforcing an order of the National Labor Relations Board directed against petitioners.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 72-77)[1] has not yet been reported. It is appended hereto as Appendix A. The Board's Order is reported at 153 NLRB 1363 and is appended hereto as Appendix B. The Board's earlier Determination of Dispute is reported at 150 NLRB 88 and is appended hereto as Appendix C. Its order clarifying the foregoing Determination (R. 34) is unreported and is appended hereto as Appendix C-1.

JURISDICTION

The judgment of the Court below (R. 78-82) was filed on June 8, 1967 and is appended hereto as Appendix D. A petition for rehearing was denied on July 3, 1967. The jurisdiction of this Court is conferred by 28 USC Section 1254 and by 29 USC Section 150(e).

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[1] "R" refers to Volume ONE of the record filed in this Court by the Clerk of the Court below; "Tr." refers to Volume TWO of said record and consists of the reporter's transcript of the proceedings before the Board. Exhibits, contained in Volume THREE of said record, will be identified as they are designated in the transcript.

QUESTIONS PRESENTED

The judgment below enforced an order of the National Labor Relations Board directing petitioners to cease and desist from engaging in peaceful economic action[2] against the United States Steel Corporation (the employer) with the object of compelling it "to assign the work of unloading the Employer's cargo from the Employer's ships at the Employer's dock at Pittsburg, California, to employees represented by [petitioners] rather than to employees employed in the production and maintenance unit . . ." (153 NLRB at 1367-8; R. 28-9; App. xviii-xix).

The questions presented are:

(1) Whether the Board properly discharged the duties imposed upon it by this Court in *National Labor Relations Board v. Radio and Television Broadcast Engineers Union* (1961), 364 US 573.

(2) Whether the Board's findings are supported by substantial evidence on the record considered as a whole.

(3) Whether the Board arbitrarily and capriciously refused or neglected to take into account evidence in the record that the work in dispute is indisputably longshoremen's work.

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[2]The Board Order employed the classical statutory language: "engaging in, or inducing or encouraging employees of United States Steel Corporation or other persons engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or threatening, coercing, or restraining United States Steel Corporation or any other persons engaged in commerce or in an industry affecting commerce. . . ." (153 NLRB at 1367; R. 28; App. xviii)

STATUTES INVOLVED

The relevant provisions of Sections 8 and 10 of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, 29 USC 515 et seq., are appended hereto as Appendix E.

STATEMENT OF THE CASE

The Court below, exercising its jurisdiction pursuant to Section 10(e) of the National Labor Relations Act (R. 72; App. i, xli), directed petitioners to cease and desist from engaging in peaceful economic action to compel the employer to assign the work of unloading steel cargo from an ocean-going vessel to longshoremen rather than to plant employees.

The dispute arose at the employer's plant in Pittsburg, California, where it manufactures steel products from steel billets on a 400-acre waterfront tract. Prior to February 15, 1964, the plant had produced its own billets in open hearth furnaces. On that day those furnaces were shut down in compliance with air pollution regulations and in order to continue production the employer arranged to bring billets from the east coast to its California plant by means of a large inter-coastal vessel, the SS COLUMBIA (R. 21-22; Tr. 91-97).[3] Petitioners, representing employees who traditionally perform the work of unloading cargo from such vessels, requested that the

[3]The employer also brought billets in by rail (R. 22; Tr. 94-5). There is however no dispute concerning the unloading of the rail cars.

unloading of the steel billets be assigned to such employees. When the employer refused to make that assignment, petitioners protested by picketing.[4]

In May and June of 1964, the employer charged that petitioner had committed unfair labor practices by inducing work stoppages to compel the employer to assign the work of unloading the cargo to employees represented by petitioners rather than to the plant employees.

A hearing was held, pursuant to Section 10(k) of the Act, at the conclusion of which the Board held that the plant employees rather than the employees represented by petitioners were "entitled" to unload the steel billets (R. 28-29; App. xxxiv).

Petitioners, believing that the Board's holding was not supported by substantial evidence on the whole record and was erroneous, capricious and arbitrary (R. 41-42), refused to comply with it. As the Court of Appeals noted (R. 72, 76; App. ii, vii), this was the only way in which petitioners could raise the issue.

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[4]While the record shows that at one time petitioners engaged in what has been described as mass picketing (R. 23), neither the Board's orders (R. 19, 54; App. xviii, xxxiii) nor the judgment of the Court of Appeals (R. 78-81; App. xxxvii) is limited to such conduct alone. The decisions below prohibit the exercise by petitioners of any form of peaceful economic action and persuasion and are not grounded upon the fear that mass picketing will be resumed. Should it be argued in response that the past mass picketing justifies the judgment, although this was not argued below, we reply by saying that the record does not support such a conclusion. To the contrary, it shows obedience to a state court restrainer of such picketing and to a district court order issued under 10(l) of the Act restraining all picketing.

If it is mass picketing alone which is the nub of the complaint, then the case should be remanded to the Court of Appeals with instructions to modify its order.

In the unfair labor practice proceeding which followed, the Board adhered to its original holding and ordered petitioners to desist from even peaceful protest to press their claims. (R. 54, 59; App. xxi, xxxiv). The Court of Appeals ordered enforcement of the Board's order (R. 77; App. ix) and denied a petition for rehearing (R. 83). This petition for certiorari is now filed to review the judgment of the Court of Appeals.

REASONS FOR GRANTING THE WRIT

THE BOARD'S DETERMINATION OF THE DISPUTE WAS ARBITRARY AND CAPRICIOUS, WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE, AND DOES NOT CARRY OUT THIS COURT'S DIRECTIVES IN NATIONAL LABOR RELATIONS BOARD v. RADIO AND TELEVISION BROADCAST ENGINEERS UNION (1961), 364 US 573.

In *National Labor Relations Board v. Radio and Television Broadcast Engineers Union* (1961), 364 US 573—the *CBS* case—this court spelled out the standards which the Board was to apply in determining disputes under Section 10(k). In that case, the Board had limited its consideration to the presence or absence of an outstanding Board order or certification, or of a collective bargaining agreement. It had refused to consider other criteria, such as the nature of the work and the practice and customs of the employers and unions involved, or of the industry generally (*ibid.* at 577, 578). This court, in affirming an order of the Court of Appeals denying enforcement of the Board order (*National Labor Relations*

Board v. Radio and Television Broadcast Engineers Union [2nd Cir., 1959], 272 F. 2d 713), held that the Board was to decide these 10(k) cases by applying to them

> "... the standards generally used by arbitrators, unions, employers, joint boards and others in wrestling with this problem." (364 US at 583).[5]

This is, so far as we know, the first case to reach this court since *CBS* in which there is presented a direct challenge to the Board's determination of a dispute under Section 10(k). It therefore raises for the first time questions relating to the manner in which the Board is carrying out its duties under that decision.

Since the effectuation of the Board's 10(k) determination is through the enforcement of the order issued in the subsequent unfair labor practice proceeding (R. 72, 76; App. ii, vii), the standard of proof required by this court in cases involving the enforcement of such an order is applicable.

In *Universal Camera Corporation v. National Labor Relations Board* (1951), 340 US 474, this court

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[5]In *International Association of Machinists* (1962), 135 NLRB 1402, the Board, following the directions indicated in *CBS*, stated that it would thenceforth consider "all relevant factors" and specified them as including "the skills and work involved, certifications by the Board, company and industry practice, agreements by the unions and between employers and unions, awards of arbitrators, joint boards, and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer's business. This list of factors is not meant to be exclusive, but is by way of illustration." (135 NLRB at 1410-1)

in construing the language of Section 10(e)[6] held that

> "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." 340 US at 488.[7]

In the case at bar, the Board failed to apply this standard of proof to each of the various criteria which are relevant in the determination of a 10(k) dispute.

(A) *The Nature of the Work*

There is no doubt that the work in dispute is, by any understanding of the language, "longshore work". In other 10(k) cases, the question sometimes may be a close one as to whether the work is properly identifiable as one kind or another. Here, however, there can be no question whatsoever that, whether looked at from the point of view of the American labor movement,[8] federal legislation,[9] traditional

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[6]"The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive."

[7]See *Fuller Products Inc. v. National Labor Relations Board,* [4 Cir., 1967] 376 F. 2d 369, 372-3; *National Labor Relations Board v. Purity Food Stores, Inc.,* [1 Cir., 1967] 376 F. 2d 497, 501; *Rives Manufacturing Corp. v. National Labor Relations Board,* [6 Cir., 1967] 376 F. 2d 511, 515.

[8]See U. S. DEPARTMENT OF LABOR, DICTIONARY OF OCCUPATIONAL TITLES (Washington, D.C., 1965): "LONGSHOREMAN (water trans.) I. 911.883, Operates material-handling equipment, such as power winch . . . [or] crane . . . to transfer cargo into or from hold of ship and about dock area: Operates crane or winch to load or unload cargo, such as automobiles, crates, scrap, and *steel* beams, using hook, magnet, or sling in accordance with signals from other workers." (page 432; italics supplied)

[9]See, e.g., 33 USCA 901, 903 (Longshoremen's and Harbor Workers Compensation Act) setting up a special system of industrial compensation for injured longshoremen.

union jurisdiction,[10] and the ship unloading operations at this very plant prior to the time this dispute arose, the work here involved is work which is ordinarily performed by longshoremen and not by production and maintenance employees in a steel plant.

An examination of the seventeen photographs in evidence (EX 5A-5F; LX 1A-1H and 20A, 20B and 20C) demonstrates without question that we are here dealing with a longshore operation in its classic form.[11] A vessel[12] brings cargo from the Atlantic Coast to a dock in California; the cargo is unloaded in large units;[13] the workers in the hold of the ship remove dunnage (Tr. 104) and hook the cargo onto chains connected with a spreader bar which in turn

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[10]See PETERSEN, HANDBOOK OF LABOR UNIONS (American Council on Public Affairs [1944]), at pages 200, 202, for a statement of historic longshore jurisdiction: "loading and unloading of all floating structures" and "loading and unloading of vessels", and at page 365, for historic steel jurisdiction: "iron and steel manufacturing, processing and fabricating".

> "A longshoreman has been defined as 'a laborer who works loading and discharging cargo' while a stevedore is 'a man in charge of the stowage of cargo and the boss of longshoremen. The stevedores are the foremen and the longshoremen are the laborers.' Bradford: A Glossary of Sea Terms (1944). The origin of longshoreman appears to come from the words 'along shore'. 'Roustabouts' and 'dock wallopers' (the former, indicating laborers; the latter, loafers) are persons who handle cargo on river boats. Webster: New International Dictionary, Second Edition, Unabridged (1951)." NORRIS, MARITIME PERSONAL INJURIES, Second Edition, page 6.

[11]For the convenience of the Court and to demonstrate visually the nature of the work involved, we attach as Appendix F three of those photographs; LX 20A shows the hold of the vessel with the steel billets in it; LX 20B shows a load of billets being removed from the hold; EX 5F shows a load of billets being landed on the dock and also shows the cranes used in the operation.

[12]And a large one it is: 20,000 tons displacement; 16,000 tons capacity (Tr. 96; Tr. 189).

[13]15 ton lifts, 30 feet in length (Tr. 106).

is attached to a whirley crane.[14] When the crane is operated by a craneman,[15] the cargo is lifted out of the hold of the vessel and deposited on the dock where other workers unhook it so that it may be moved, used or stored (Tr. 96-105).

This is typically work which has been performed by longshoremen, literally from time immemorial—but on the record in this case for over forty years in Pacific Coast ports (Tr. 329-330)—without challenge from anyone (Tr. 327-328). This Court reviews dozens of cases each year in which employees who perform this work are regarded as longshoremen for purposes of federal statutes and who, as longshoremen, derive the benefits of the doctrine of unseaworthiness. Employees who perform this work are not regarded as "plant employees" for the purposes of these and other statutes or for any other purposes, so far as we know.

It is significant that whenever steel was unloaded from vessels at Pittsburg, California, before this dispute arose, it was unloaded by longshoremen (Tr. 135-136, 339) and that it was unloaded under a collective bargaining contract between petitioners and a substantially wholly-owned subsidiary of the present employer (Tr. 149-150, 225, 339, LX 2, 4, 6, 15, 17). Production and maintenance employees never un-

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[14] As to the use of such cranes in standard longshore work, see *American Mail Line* (1963), 144 NLRB 1432; *Albin Stevedore Co.* (1963), 144 NLRB 1443; *Howard Terminal* (1964), 147 NLRB 359; *United Industrial Workers of North America* (1967), 162 NLRB No. 96, 64 LRRM 1118.

[15] Longshoremen unload 99% of the dry cargo and operate 95% of the cranes used in cargo handling on the Pacific Coast (Tr. 371, 373).

loaded a vessel at the Pittsburg plant before the present dispute arose (Tr. 54, 135-136).

(B) *Industry Practice*

There is no evidence that there is, or ever has been, any practice in either the steel fabricating or the longshore industry by which production and maintenance employees unload steel cargo from intercoastal vessels. On the other hand, there is ample evidence that, as the Court below noted, "traditionally the unloading of ships on the Pacific Coast is done by longshoremen" (R. 76; App. vii).

Contrary to the intimation in the opinion below that this practice is not "clearly" established where the ship, cargo and dock are owned by a single employer, the record reveals that the industry practice on the Pacific Coast is to assign to longshoremen, not to plant employees, the work of unloading all vessels—even at docks operated by the owner of the adjacent plant (Tr. 350-353, 381). The jurisdictional line at which the plant workers normally take over is universally recognized as "the point at which [the cargo] is landed" (Tr. 353).

This makes sense both in terms of function and in terms of delineating a line which is clearly understood by all parties so that the friction sought to be avoided by Section 10(k) can be minimized. The Board has recognized the importance of following such industry practices in other cases. *Local 853, International Union of Operating Engineers* (1962), 136 NLRB 993.

This is so, even when, as here, the employer had assigned the work to a different group of employees, *Local 49 International Union of Operating Engineers* (1967), 164 NLRB No. 94, 65 LRRM 1143, and even, when, as here, the direct employer was not a signatory to the collective bargaining contract. *United Industrial Workers of North America* (1967), 162 NLRB No. 96, 64 LRRM 1118.

In the last cited case, the Board, in dealing with a situation in no way distinguishable from the instant case, said:

> ". . . we are further urged by the Respondent to view this dispute against the background of protracted negotiations between the Pacific Maritime Association, of which Albin is a member, and various craft unions in the West Coast shipping industry which culminated in the execution of the West Coast Longshore Agreement in 1961. The primary objective of that agreement, as the Board has recognized, was to lighten the impact of unemployment upon longshoremen created by the increased use of mechanized equipment in longshore operations, and thereby promote industrial peace in this area of American industry.
>
> *It is clear that the work in dispute here, like that covered by the Pacific Coast Longshore Agreement, is in the broadest sense longshore work, as in both instances it involves the loading and discharging of cargo from vessels. In our view, the fact that the Respondent is not a signatory to that agreement does not render the same policy considerations less applicable herein* . . ." (64 LRRM at 1120; italics supplied).

The Board's failure to recognize this factor here flies in the face not only of this court's direction in *CBS,* but also of its own decisions in the cited cases.

In those cases in which the courts of appeal have enforced Board orders based upon 10(k) determinations, they have emphasized the consistency between the Board's determination and the longstanding custom and practice in the industry, *National Labor Relations Board v. Local 825* (3rd Cir., 1964), 326 Fed. 2d 213, 217; *National Labor Relations Board v. Local Union No. 3* (2nd Cir., 1964), 339 Fed. 2d 145, or the fact that the Board followed the accepted standards of trade jurisdiction, *National Labor Relations Board v. Local 991* (5th Cir., 1964), 332 Fed. 2d 66, 71. This it did not do in the case at bar.

(C) *Skills and Safety Factors*

As to the skills and safety factors involved, it is clear that the steelworkers never worked on whirley cranes before (Tr. 54, 135-6), while the longshoremen have done so regularly and consistently (Tr. 330, 377). As to safety, the longshore operation with its hatch tender-craneman for signalling, its hour-on and hour-off procedure, and its safety code (Tr. 333-6, 375) obviously provides a safer operation than the steelworkers' use of a "hooker" for this dangerous operation.[16] Particularly is this true since the steelworker

[16]See EX 8. It is significant that the job descriptions here relied upon by the employer (EX 7 and 8) did not even come into existence until January 16, 1964 (Tr. 240, 241, 260, 261).

crane-driver has had only three to five hours of training on the whirleys (Tr. 112).

> ". . . operations of cranes by longshoremen is safer by virtue of individual longshoremen's experience in the position of hatchtenders. It is the hatchtender who gives the signals to the crane operator and who, by working in the hatch, acquires load-capacity experience important to safe crane operation." *American Mail Line* (1963), 144 NLRB 1432, 1441.

In its recent decision in the *United Industrial Workers* case, *supra,* the Board said:

> "Thus, the periodic interchange by longshoremen between the two positions would eliminate the need for a relief operator, and enable the operator to perform safer and more efficiently by virtue of his familiarity with the physical conditions aboard ship." (64 LRRM at 1120).

(D) *Constitutions, Collective Bargaining Contracts and Certifications*

All of the objective factors heretofore considered are reflected in such legal documentation as exists.

(i) The *constitutions* of the two unions reflect their own understanding of their respective jurisdictions.

The constitution of the longshoremen, drawn up long before this controversy arose (Tr. 320), defines its "industrial jurisdiction" as extending to

> "All workers employed in the loading and unloading of vessels, and operations incidental to

such loading and unloading." (EX 21, Article IV, Section 2[a]).

The steelworkers' constitution (SX 9), of course, sets out no such claim of jurisdiction.

(ii) The *contracts* negotiated between steelworkers and the employer are limited to

> "The production, maintenance and hourly rated non-confidential clerical jobs employed in and about the company's steel manufacturing and by-product coke plants for which units the union is, or may be during the life of this agreement, certified by the National Labor Relations Board." (SX 11, Section 2[a]).[17]

The steelworkers' contract makes no provision for any classification of employees engaged in the loading or unloading of vessels (SX 11, Section 9).

The contract of petitioners with the wholly owned subsidiary of the employer covered:

> "all handling of cargo in its transfer from vessel to first place of rest, and vice versa . . ." (LX 2, Section 1[a]).

The contract of petitioners with the Pacific Maritime Association covers

> "all movement of cargo on vessels of any type or on docks or to or from railroad cars and barges at docks" (LX 22, Section 1.1).

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[17]We deal with the matter of certifications below.

The fact that this employer is not a signatory to the current contract[18] does not defeat the longshoremen's claim. As the Board said in the *United Industrial Workers* case, *supra,*

> "In our view, the fact that the Respondent is not a signatory to the agreement does not render the same policy considerations less applicable herein . . ." (64 LRRM at 1120).

(iii) The *certifications* of the Board itself reflect a recognition of the fact that the work in question should be assigned to the longshoremen.

The steelworkers' certification (SX 8) is limited to employees engaged "in the manufacture and sale of steel, steel products and by-product coke." It makes no reference to cranemen or hookmen or any of the classifications of employees involved in the unloading of steel from vessels.

The petitioners' certification, on the other hand, specifically embraces those who "do longshore work in the Pacific Coast ports of the United States" (*Shipowners Association of the Pacific Coast,* 7 NLRB 1002, at 1041). Longshore work is defined as work done by longshoremen and the Board defined longshoremen as "everyone who works either on board ships or on docks" (*ibid.* 1025).

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[18]It will be remembered that on the only occasions when steel was unloaded from vessels at the employer's Pittsburg plant prior to the instant occasion, it was unloaded by employees represented by the petitioners pursuant to a collective bargaining contract between petitioners and a substantially wholly-owned subsidiary of the present employer. (Tr. 135-6, 149-150, 225, 339, LX 2, 4, 6, 15 and 17)

In a series of recent cases (*supra,* n. 14), the Board emphasized the breadth of this original longshore certification saying that "it does cover employees 'who do longshore work' and whose job it is to 'handle said waterborne cargo' ". *American Mail Line* (1963), 144 NLRB 1432 at 1440.

> "The work in question here . . . is in the broadest sense longshore work as described in the certification, since it involves the loading and unloading of waterborne cargo." (*ibid.* at 1442).

CONCLUSION

If stability in labor relations is to be obtained, if the fruits of collective bargaining are to be retained by the employees involved, and if the objectives of federal labor legislation are to be properly served, this Court should not permit to stand an order which allows the United States Steel Corporation to step outside the jurisdictional lines established on the Pacific Coast in the longshore industry. So long as the steel corporation manufactures steel, it need deal only with steelworkers. However, when it engages in unloading fifteen-ton lifts from a seagoing vessel by means of conventional longshore equipment and thereby performs a conventional longshore operation, it should not be insulated from peaceful protests by longshoremen, if it assigns the work to non-longshoremen.

If the steel corporation can get away with what it is attempting to do here, then every employer simi-

larly situated, irrespective of the product involved, can do likewise.[19] This could result in a breakdown of longshore standards over a substantial portion of the industry on the West Coast. It could result in significant industrial strife between the longshoremen and the operators of so-called industrial docks. It could result in the breakdown of wages, hours and working conditions and the destruction of the mechanization-automation plan which has had such a hopeful beginning and which received the Board's approval in the recent "crane cases".[20]

This Court should not permit the disruption of the industry-wide automation program which the longshoremen have pioneered on the Pacific Coast. The ILWU has worked hard, and in the best traditions of constructive American collective bargaining, to set up a system which, while fair to the employers, gives the workingmen some measure of security against the inroads of automation. As in the "crane cases", so here, the ship is merely a tool of the longshore trade.

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[19]Already the deleterious effects of the Board's decision in this case are being felt. The Aluminum Company of America, at its Vancouver, Washington plant has obtained the Board's blessing in its assignment of the unloading of aluminum ore to production employees, thereby by-passing the longshoremen of that port. *(International Longshoremen's & Warehousemen's Union, Local 4* [1966], 158 NLRB No. 99, 62 LRRM 1156.)

Indeed, in the *Aluminum Company* case, the situation is more serious for there the Board determined that the plant employees were entitled to do the longshore work even though the vessel did not belong to the employer and even though the employer, after the unloading of the alumina ore, sought to reload the ship with ordinary commercial cargo. *(International Longshoremen's & Warehousemen's Union, Local 4* [1967], 163 NLRB No. 143, 65 LRRM 1051.)

[20]See *supra*, n. 14.

It is patently not a tool of the steelworkers trade. It should therefore be unloaded by longshoremen and under longshore conditions. Against all of this, there is simply the Company's desire to save a few dollars on its longshore costs.[21]

Balancing these considerations we submit that if the Court is to require the Board to perform its function of encouraging collective bargaining and of keeping and promoting industrial peace, it must reverse the judgment below.

We hope that this petition is not an exercise in futility, and that the Court will not take the view that it is bound by the Board's alleged "expertise". The issues, in terms of a collective bargaining contract as a charter for an industry and of its role as a stabilizing force in industrial relations as well as in terms of setting standards to which an employer who wishes to enter into a presently unionized field must adhere, are too important to be dismissed in such a pro forma way.

A careful consideration of these factors must, we urge, lead the Court to the conclusion that when

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[21]The record reveals the fact to be that the employer has gone outside the longshore unit in order to impose upon those who do this work wages, hours, and working conditions substantially inferior to those which the longshoremen have established for themselves as the result of many years of collective bargaining.

A comparison of the wages paid to longshoremen (Tr. 332) with those paid to steelworkers for the same work, as well as a consideration of the benefits received by longshoremen in terms of pensions, welfare and related items (Tr. 340-1, LX 24, 25, 26), demonstrate the point. On the longshoremen's mechanization benefits, see the cases cited in note 14, *supra*. This is simply a case where the Board is assisting an employer to do an operation at a cheaper labor cost.

an employer unloads cargo from ocean-going vessels by means of traditional longshore gear, that employer should either subject himself to the prevailing longshore collective bargaining pattern or should not be heard to complain (and receive the assistance of the Board) when longshoremen peacefully protest his failure to do so.

The petition for certiorari should be granted and the judgment below reversed.

Dated; San Francisco, California,
September, 1967.

Respectfully submitted,
NORMAN LEONARD,
Counsel for Petitioners.

GLADSTEIN, ANDERSEN,
LEONARD & SIBBETT,
Of Counsel.

(Appendices Follow)

Appendix A

United States Court of Appeals
for the Ninth Circuit

National Labor Relations Board, Petitioner, vs. International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54 and 91, International Longshoremen's & Warehousemen's Union, Respondents.	No. 21,299

[May 15, 1967]

On Petition to Enforce an Order of the
National Labor Relations Board

Before: JERTBERG and MERRILL, Circuit Judges; and TAYLOR, District Judge.

TAYLOR, District Judge:

The National Labor Relations Board (Board) has petitioned this court for enforcement of its order pursuant to Section 10(e) of the National Labor Relations Act, as amended. 29 U.S.C. §§ 141-187 (Act). The alleged unfair labor practice having occurred in Pittsburg, California, this court has jurisdiction.

Although this is a petition by the Board for enforcement of its order finding the respondents, International Longshoremen's and Warehousemen's Union; and Locals 6, 10, 34, 54 and 91, International Longshoremen's and Warehousemen's Union (Longshoremen) in violation of Section 8(b)(4)(i) and (ii)(D) of the Act,[1] the real dispute here is whether a previous Section 10(k) order, assigning work to production and maintenance employees represented by the United Steelworkers of America, AFL-CIO, and United Steelworkers of America, Local 1440, AFL-CIO, (Steelworkers) instead of the Longshoremen, was arbitrary and capricious.[2]

The United States Steel Corporation (Company) is a large corporation engaged in the manufacture of steel and steel products at plants located throughout the United States, including a plant at Pittsburg, California. The Pittsburg Works is a large steel mill which manufactures steel products from steel billets. Prior to 1964 the Pittsburg Works produced its own billets in open-hearth furnaces, these billets being loaded, unloaded and transported to and from storage areas and finishing mills on the premises by Steelworkers. Because of air-pollution regulations, the open-hearth furnaces were shut down in early 1964. In order to continue production at the Pittsburg Works the Company had to transport steel billets from its other plants by rail and by ship. Fifteen-ton billets were brought to the Pittsburg Works from

[1] Reported at 153 NLRB No. 121.
[2] Reported at 150 NLRB 88.

Fairless, Pennsylvania, on the *S.S. Columbia,* a vessel owned and operated by the Company, and used exclusively for carrying billets to the Pittsburg Works. The billets were transported to the Company's dock at the Pittsburg Works, a 400 acre waterfront tract, where the *Columbia* was unloaded by the Steelworkers.

The Company installed two new "whirley" cranes at the Company's dock for the purpose of unloading the vessel transporting the steel billets. Railroad tracks have been installed on the pier, and when the vessel was not in port the same cranes were used to unload material from railroad cars on the pier. The vessel, as well as the railroad cars, were unloaded by the Steelworkers, these employees performing and utilizing the same skills in these operations as they did in their regular assignments throughout the plant in loading and unloading railroad cars, trucks and tractors.

Shortly before the first scheduled landing of the *Columbia* in February, 1964, the Longshoremen advised the Company and the Steelworkers that the Longshoremen claimed the work of unloading the *Columbia.* Representatives of the two unions met and discussed the disputed work assignment. When the Steelworkers maintained they would unload the *Columbia* the Longshoremen threatened to picket and advised the Company of their desire to be assigned the unloading of the *Columbia.*

When the *Columbia* docked on February 19, 1964, the Longshoremen placed pickets at the Pittsburg

Works for three days while the ship was being unloaded. The Longshoremen carried signs with legends protesting the work assignment and passed out leaflets presenting the Longshoremen's views on the work assignment. The *Columbia* was unloaded in April, May and July by the Steelworkers and each time the Longshoremen picketed. The May landing of the *Columbia* was delayed five days because it was met with a Longshoremen's picket boat and could not obtain the services of a pilot or a tug. When the *Columbia* did dock five days later, approximately 300 pickets congregated at the plant gates, obstructed access to the plant, making it impossible for the plant's employees to enter for a period of 30 hours. The picketing also stopped deliveries to and from the plant as well as stopping construction work on the plant premises being performed by about 150 employees working for five independent contractors. The mass picketing was discontinued as a result of a state court proceeding on May 14, 1964.

When the *Columbia* returned on July 7, 1964, the Longshoremen resumed picketing at the plant gates with the end result that about 15 plant employees and 175-180 employees of various independent contractors refused to work on the premises. Pursuant to Section 10(1) of the Act a temporary injunction was issued against the picketing.

A charge was initiated by the Company and the Board proceeded to determine the merits of the jurisdictional dispute as required by Section 10(k) of the Act. After a hearing the Board determined that the

Steelworkers were entitled to unload the Company's cargo from the Company's ships at the Company's dock.

The Longshoremen refused to comply with the Board's determination and the General Counsel of the Board issued a complaint against the Longshoremen alleging a violation of Section 8(b)(4)(i) and (ii)(D) of the Act. By stipulation of the parties the matter was decided by the Board on the basis of the evidence adduced at the hearing in the Section 10(k) proceeding. The Board adhered to its previous determination that the work in dispute belonged to the Steelworkers. This meant, and the Board so found, that the conduct of the Longshoremen violated Section 8(b)(4)(i) and (ii)(D) of the Act. The Board's order requires the Longshoremen to cease and desist from continued violations of Section 8(b)(4)(i) and (ii)(D) of the Act and to post appropriate notices. The Board, in order to effectuate its determination of the underlying work assignment, seeks enforcement of its order.

In *N.L.R.B. v. Radio & Television Broadcast Engineers, Local 1212, IBEW, AFL-CIO,* 364 U.S. 573, 81 S. Ct. 330, 5 L. Ed. 2d 302 (1961) (Local 1212), the Supreme Court held that the Board must determine the merits of an underlying jurisdictional dispute by making an affirmative award of the disputed work in order to discharge its duties under Section 10(k) of the Act. In *International Ass'n of Machinists, Lodge 1743, AFL-CIO,* 135 NLRB 1402, 1410-1411 (1961), the Board in accordance with *Local 1212, supra,* stated

its approach to the difficult problem of a work assignment dispute in the following manner:

> "At this beginning stage in making jurisdictional awards as required by the Court, the Board cannot and will not formulate general rules for making them. Each case will have to be decided on its own facts. The Board will consider all relevant factors in determining who is entitled to the work in dispute, e.g., the skills and work involved, certifications by the Board, company and industry practice, agreements between unions and between employers and unions, awards of arbitrators, joint boards, and the AFL-CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer's business. This list of factors is not meant to be exclusive, but is by way of illustration. The Board cannot at this time establish the weight to be given the various factors. Every decision will have to be an act of judgment based on common sense and experience rather than on precedent. It may be that later, with more experience in concrete cases, a measure of weight can be accorded the earlier decisions."

This court recognizes that our review of the Board's award in such matters is limited, but this court does have the power to determine whether there is substantial evidence to support the Board, or if its order is not in accordance with the law. *N.L.R.B. v. Local 991, International Longshoremen's Ass'n,* 332 F. 2d 66 (5th Cir. 1964); *N.L.R.B. v. Local 825, International Union of Operating Engineers, AFL-CIO,* 326 F. 2d 213 (3rd Cir. 1964). It is also noted that findings of the Board with respect to questions of fact, shall be

conclusive, if supported by substantial evidence on the record considered as a whole. 29 U.S.C. § 160(e).

In accordance with these principles, the court approaches the review of the Board's award of the work in dispute to the Steelworkers. Since there is no independent review of a Section 10(k) work assignment dispute, the only procedure by which the Longshoremen can contest the work award is on review of the Section 8(b)(4)(i) and (ii)(D) unfair labor practice order. If the Section 10(k) order falls, the unfair labor practice order also falls. *N.L.R.B. v. Local 991, International Longshoremen's Ass'n, supra,* 332 F. 2d at 71.

The Board considered a number of relevant factors in deciding that the work should be awarded to the Steelworkers. It noted that traditionally the unloading of ships on the Pacific Coast is done by Longshoremen; that this practice was not clearly established in regard to the unloading of cargo from a ship, where the ship, cargo and dock are owned by an employer; that the work in dispute was a new operation and the Steelworkers had been unloading the *Columbia* ever since the new operation began; that the Steelworkers unloaded the ship to the Company's satisfaction and performed the work in a safe manner; that an award of the work to the Longshoremen would have resulted in a loss of jobs to the Steelworkers, who lost 124 jobs when the furnaces were shut down; that an award to the Steelworkers would not entail a job loss to the Longshoremen who did not have and never had a contract with the Company; that the job descriptions

of the disputed work were substantially identical with those of other jobs included in the production and maintenance unit covered by the Steelworkers' contract; that the Longshoremen, although being experienced in unloading ships with "whirley" cranes, the Steelworkers were experienced in similar operations with other large rotating cranes; that the Steelworkers were experienced in handling the fifteen-ton billets and the Longshoremen were not experienced in handling billets of this size; that it would have been necessary to transport the Longshoremen a considerable distance for part time employment, performing work only directly connected with unloading a ship; that the Longshoremen made no claim in regard to the unloading of the railroad cars on the pier; and that the work in dispute complimented [sic] the work of the Steelworkers, since they were employed at the premises and were loading and unloading railroad cars with the same cranes.

The Board recognized that there were factors which weighed in favor of the Longshoremen, but in considering all the relevant factors and weighing them, the Board found the work should be awarded to the Steelworkers because of the overriding factors in favor of the Steelworkers. Under the rationale of *Local 1212, supra,* it is the function of the Board to consider all the relevant factors and to weigh and evaluate the evidence adduced in regard to each. After reviewing the record here this court is of the opinion that the Board did perform its function in arriving at its determination and that such determination is supported by substantial evidence.

Having decided that the work award by the Board must be upheld, the Board's order finding the Longshoremen in violation of Section 8(b)(4)(i) and (ii)(D) must be enforced. There is no doubt that the object of the picketing by the Longshoremen was to force the Company to assign the work to the Longshoremen instead of to the Steelworkers. The Longshoremen's only defense to the unfair labor practice charge was an illegal work assignment and that having failed, the order must be enforced. There is no doubt that the Act proscribes that kind of conduct. *N.L.R.B. v. Local 991, International Longshoremen's Ass'n, supra,* 332 F. 2d at 73 and cases cited therein.

The petition is granted and the order of the Board will be enforced.

Appendix B

United States of America
Before the National Labor Relations Board

International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union and United States Steel Corporation	Case No. 20-CD-136

DECISION AND ORDER

Upon a charge filed on May 13, 1964, and amended on June 8, 1964, by United States Steel Corporation, hereinafter called U. S. Steel, the General Counsel for the National Labor Relations Board, herein called the General Counsel, by the Regional Director for Region 20, issued a complaint, dated January 29, 1965, against International Longshoremen's & Warehousemen's Union, and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union, herein called the Respondents, alleging that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(D) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the complaint, the charge, the amended charge, and the notice of hearing were duly served upon the Re-

spondents and U. S. Steel. Thereafter, on February 5, 1965, the Respondents filed an answer denying the commission of any unfair labor practices.

With respect to the unfair labor practices, the complaint alleged that: pursuant to Section 10(k) of the Act, the Board had heard and made a determination of dispute out of which the charged unfair labor practice arose; the determination of the Board was that the Respondents were not lawfully entitled to force or require U. S. Steel to assign the work of unloading the Employer's cargo from the Employer's ships at the Pittsburg Works dock to employees represented by Respondents rather than to employees represented by Local No. 1440, United Steelworkers of America, AFL-CIO, herein called Steelworkers; the Respondents have not complied with the terms of the Board's Decision and Determination of Dispute and the Board's Order Clarifying the Decision and Determination of Dispute; the Respondents since on or about February 19, 1964, by means proscribed by Section 8(b)(4), have engaged in conduct an object of which was to force or require U. S. Steel to assign the disputed work to employees who are represented by Respondents rather than to employees who are represented by the Steelworkers; and by such conduct the Respondents have engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

On April 13, 1965, all parties filed a joint Motion to Transfer Proceeding to the Board, with a Stipulation of Facts, entered into by the parties on April 9, 1965,

attached thereto. The Motion provides that the parties waive their rights to a hearing and the issuance of a Trial Examiner's Decision and Recommended Order, and that the case be submitted directly to the Board for findings of fact, conclusions of law, and an order. It further provides that the entire record in the proceeding shall consist of the Stipulation of Facts and the exhibits attached thereto, including the charge, amended charge, complaint and notice of hearing, and answer in the present proceeding, and the Board's Decision and Determination of Dispute, and Order Clarifying Decision and Determination of Dispute, and the entire record in the Section 10(k) proceeding, and that no further oral testimony is necessary or desired by the parties. On April 15, 1965, the Board granted this motion and ordered the aforesaid stipulation approved and accepted by the Board as part of the record herein. The Board further ordered the proceeding duly transferred to and continued before the Board for the purpose of making findings of fact and conclusions of law, and for the issuance of a Decision and Order. Thereafter, all the parties filed briefs with the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

Upon the basis of the aforesaid stipulation, the record in the Section 10(k) proceeding, the briefs filed by the Respondents, the Steelworkers, U. S. Steel, and the General Counsel, and the entire record in this case, the Board makes the following:

FINDINGS OF FACT

I. *The Business of the Company*

United States Steel Corporation is a New Jersey corporation engaged in the manufacture of steel and steel products at plants located throughout the various States of the United States, including the Pittsburg Works at Pittsburg, California. During the past calendar year, in the course and conduct of its business operations, U. S. Steel received goods, supplies, and materials at the Pittsburg Works valued in excess of $50,000, which were shipped directly from sources outside the State of California. During the past calendar year, in the course and conduct of its business operations, U. S. Steel shipped products valued in excess of $50,000 directly to points outside the State of California. We find that U. S. Steel is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. *The Labor Organizations Involved*

International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union; and Local No. 1440, United Steelworkers of America, AFL-CIO, are and at all times material herein have been, labor organizations within the meaning of Section 2(5) of the Act.

III. *The Respondents' Unfair Labor Practices*

In its Decision and Determination of Dispute, 150 NLRB No. 17, and its Order Clarifying Decision and Determination of Dispute, dated January 11, 1965, the Board determined that Respondents were not lawfully entitled, by means proscribed by Section 8(b)(4)(D), to force or require U.S. Steel to assign the work in dispute, namely, the unloading of the Employer's cargo from the Employer's ships at its dock at Pittsburg, California, to employees represented by Respondents rather than to production and maintenance employees of U. S. Steel, represented by the Steelworkers. In its Decision and Determination of Dispute, the Board directed the Respondents to notify the Regional Director in writing as to whether they intended to comply with the Board's determination. The Respondents, by letter dated January 18, 1965, stated that they did not intend to comply with said determination.

Section 10(k) of the Act provides in substance for the further processing of the Section 8(b)(4)(D) charge if the parties to the dispute do not comply with the Board determination. As the Respondents have not complied and have stated that they would not comply with the Section 10(k) determination, the General Counsel has issued his complaint alleging that by their conduct in connection with this dispute, the Respondents have engaged in unfair labor practices in violation of Section 8(b)(4)(D).

The record establishes that beginning in February 1964, when U. S. Steel's vessel, S.S. Columbia went

into service, the Respondents claimed the work of unloading the vessel for employees they represented; that on various dates in February Respondents advised officials of Steelworkers and of U. S. Steel of their desire to be assigned the disputed work, and threatened that they would picket if the work were not assigned to employees they represented; that Respondents engaged in picketing during February, April, May, and July, 1964, at the Pittsburg Works dock during the unloading of the S. S. Columbia; that the legends on the Respondents' picket signs protested the assignment of the disputed work to employees represented by Steelworkers; and that at the same time handbills to the same effect were distributed to U. S. Steel plant employees. It is clear from the foregoing, the Respondents do not deny, and we find, that the Respondents thereby induced and encouraged employees of U. S. Steel and other employers to engage in a concerted refusal to perform services and threatened and restrained U. S. Steel, an object being to require U. S. Steel to assign the disputed work of unloading the Employer's cargo from the Employer's ship at the Employer's Pittsburg Works dock to employees represented by the Respondents rather than to employees represented by the Steelworkers. There is no contention or evidence that in assigning the work to employees represented by the Steelworkers, U. S. Steel was failing to conform to any order or certification of the Board determining the bargaining representative for the employees performing the work in dispute. The Respondents' only defense is that the employees whom it represents are entitled to the work,

and that the Board's Decision and Determination of Dispute to the contrary was erroneous. However, the arguments advanced to support this defense were considered and rejected by the Board in making its determination of the jurisdictional dispute. We shall therefore adhere to that determination.

Accordingly, we conclude that, by the foregoing conduct, the Respondents have violated Section 8(b)(4)(i) and (ii)(D) of the Act.

IV. *The Effect of the Unfair Labor Practices Upon Commerce*

The activities of the Respondents, set forth above, occurring in connection with the operation of U. S. Steel, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. *The Remedy*

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. The Respondents, International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehouse-

men's Union, are labor organizations within the meaning of Section 2(5) of the Act.

2. By engaging in, or inducing or encouraging employees of United States Steel Corporation, or of other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform services; and by threatening, coercing, or restraining United States Steel Corporation or other persons engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is forcing or requiring United States Steel Corporation to assign the work of unloading the Employer's cargo from the Employer's ships at the Employer's dock at Pittsburg, California, to employees represented by the Respondents rather than to employees employed in the production and maintenance unit at the United States Steel Corporation's Pittsburg Works, Pittsburg, California, plant, represented by Local No. 1440, United Steelworkers of America, AFL-CIO, where United States Steel Corporation is not failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work, Respondents did thereby engage in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) and Section 2(6) and (7) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union, and their officers, agents, and representatives, shall:

1. Cease and desist from engaging in, or inducing or encouraging employees of United States Steel Corporation or other persons engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or threatening, coercing, or restraining United States Steel Corporation or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require United States Steel Corporation to assign the work of unloading the Employer's cargo from the Employer's ships at the Employer's dock at Pittsburg, California, to employees represented by the Respondents rather than to employees employed in the production and mainten-

ance unit at the United States Steel Corporation's Pittsburg Works, Pittsburg, California, plant, represented by Local No. 1440, United Steelworkers of America, AFL-CIO, unless United States Steel Corporation is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places at their business offices, meeting halls, and at all places where the Respondents normally post notices for members, copies of the attached notice marked "Appendix."[1] Copies of said notice, to be furnished by the Regional Director for Region 20, shall, after being duly signed by authorized representatives of the Respondents, be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for Region 20, for posting by United States Steel Corporation and all other persons involved in this proceeding, who are willing, at all

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[1]In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

locations upon their or other premises where notice to employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 10 days of the date of this Order, what steps the Respondents have taken to comply herewith.

Dated, Washington, D.C.
JUL 9 1965

John H. Fanning, Member
Howard Jenkins, Jr., Member
Sam Zagoria, Member

National Labor Relations Board

(Seal)

Appendix C

United States of America
Before the National Labor Relations Board

International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union and United States Steel Corporation	Case No. 20-CD-136

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, following the filing of charges by United States Steel Corporation (herein called the Employer) under Section 8(b)(4)(D). The charges as amended allege, in effect, that International Longshoremen's & Warehousemen's Union and its Locals 6, 10, 34, 54, and 91 (herein called the Respondents) induced employees of the Employer and others to refuse to perform services for the Employer, and threatened and coerced it in order to force the Employer to assign the work of unloading the vessel, S. S. Columbia, to members of the Respondents rather than to members of United Steelworkers of America, AFL-CIO.[1] A hearing was held on August 4, 5, and

[1]United Steelworkers of America and its Local No. 1440 (herein called the Steelworkers) were permitted to intervene and participate in the hearing.

6, 1964, before Hearing Officer James S. Jenson. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Briefs filed by the Respondents, the Steelworkers, and the Employer have been duly considered.[2]

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following findings:

I. *The Employer Involved*

United States Steel Corporation is a New Jersey corporation engaged in the manufacture of steel and steel products at plants located throughout the various States of the United States, including the Pittsburg Works at Pittsburg, California. The Pittsburg Works is engaged in the manufacture of steel products from semi-finished steel which it sells and distributes to its customers, including defense contractors. During the past year, in the course and conduct of its business operations, the Pittsburg Works received goods, supplies, and materials valued in excess of $1,000,000 which were shipped directly from sources outside the State of California, and shipped manufactured

[2]The Employer's request for oral argument is hereby denied as, in our opinion, the record, including the briefs, adequately presents the issues and positions of the parties.

products valued in excess of $1,000,000 directly to points outside the State of California.

We find that United States Steel Corporation is an employer engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.

II. *The Labor Organizations Involved*

International Longshoremen's & Warehousemen's Union, and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union, and United Steelworkers of America, AFL-CIO, and United Steelworkers of America, Local 1440, AFL-CIO, are labor organizations within the meaning of the Act.

III. *The Disputes*

This dispute relates to the operation of unloading steel billets from the Employer's ship at the Employer's Pittsburg Works dock. The particular dispute before the Board in this proceeding involves alleged efforts by the Respondents to halt the Employer's operation and prevent members of the Steelworkers from performing this work which is claimed by the Respondents.

From the early 1930's until the end of 1951, Columbia Steel Company, a wholly owned subsidiary of United States Steel Corporation, operated the Pittsburg Works, as well as iron works at Ironton, Utah, and Torrance, California. In 1951, Columbia was merged into United States Steel Company, another wholly owned subsidiary of the Employer, and

at the end of 1952, United States Steel Company was in turn merged into the Employer, United States Steel Corporation, which now operates these three iron works, including the Pittsburg Works.

In 1942, the Steelworkers was certified by the Board as exclusive representative of all the employees at Pittsburg Works, Pittsburg, California, Torrance Works, Torrance, California, and Ironton Works, Ironton, Utah.[3] Since that time the Steelworkers has represented these employees under successive collective-bargaining contracts. The current contract, which covers a unit of all production and maintenance employees at these locations, expires May 1, 1965.[4] The Respondents have no contract with the Employer nor have they ever been certified for these employees.

The Pittsburg Works is a large steel mill located in a 400-acre tract. It produces a full line of steel products except for plate and heavy products. The finished products are manufactured out of steel billets which, prior to February 15, 1964, were produced in Pittsburg Works' own open-hearth furnaces. Prior to 1964 scrap metal was transported by the plant's railroad service to the open-hearth furnaces where it was melted down and molded into ingots; the ingots were transported to the soaking operation, then rolled into billets. The billets were stored until transported to the

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[3] *Columbia Steel Company*, 42 NLRB 1125.

[4] The unit is described in the current contract as "all individuals occupying production, maintenance, and hourly rated nonconfidential clerical jobs employed in and about the Company's steel-manufacturing and by-product coke plants . . . [excluding] individuals occupying salaried, watchmen, guard or confidential clerical positions, or supervisory positions of foreman level and above."

finishing mills on the premises where they were heated again and made into finished products—sheet products, tinplate, coated and uncoated wire, and wire products. The steel in its various forms was transported from one process to another by overhead cranes, railroad cars, trucks, and tractors. For this purpose, the Employer had 95 cranes—80 inside overhead cranes with a capacity of from 25 to 90 tons, 5 outside overhead cranes on runways ranging in capacity from five to 15 tons, and 10 mobile cranes which rotate 360 degrees on an axis, the tonnage capacity of which is not revealed in the record.

On February 15, 1964, the open-hearth furnaces of the Pittsburg Works were shut down in compliance with a regulation of the San Francisco Bay Area Air Pollution Control District. As a result, the primary rolling mill which produced the billets ceased operations. In order to continue production the Employer began to bring in all steel billets from its other plants throughout the country by rail and ship. Steel billets weighing 15 tons are now brought to the Pittsburg Works on the S. S. Columbia, a vessel currently owned and operated by the Employer. The Columbia makes a round trip between the East Coast and the Pittsburg dock every 38 days, is used for the sole purpose of carrying such billets to the Pittsburg Works, and carries nothing on the return trip.[5]

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[5]It was anticipated at the time of the hearing that a second vessel owned and operated by the Employer would commence operations in September, 1964, in the same manner as the S. S. Columbia, solely to transport steel billets from other plants of the Employer to the Pittsburg Works.

The Employer installed 2 new rotating "whirley" cranes at the Pittsburg Works dock for the purpose of unloading the vessels transporting the steel billets. Railroad tracks have also been installed on the pier, and when the vessel is not in port the same cranes are used to unload material from railroad cars which are run onto the pier. The vessel, as well as the railroad cars, are unloaded at the dock by a crew of crane operators and hookers, regularly employed in the production and maintenance unit represented by the Steelworkers. These employees perform the same work and utilize the same skills in these operations as they do in their regular assignments throughout the plant loading and unloading railroad cars, trucks, and tractors.

Until 1956 ships owned by Isthmian Steamship Company, a common carrier subsidiary of the Employer, occasionally called at the Employer's pier at the Pittsburg Works and were unloaded with shipside cranes by the Respondents and Pacific Maritime Association, of which Isthmian was a member. The dock was not used between 1956 and 1964.

On January 30, 1964, shortly before the first scheduled landing the S. S. Columbia at the Pittsburg Works dock, the Respondent International Union sent the Steelworkers a letter stating that the Respondent had learned that the work of unloading the vessel had been assigned to the Steelworkers' members but that the Respondent was the proper organization to represent the workmen on this job. Representatives of the Steelworkers and Respondent International met there-

after and discussed the disputed work assignment. When the Steelworkers reiterated their determination to perform the work assigned to them, the Respondent's representative threatened to picket. During the same period the Respondent International also communicated with the Employer by wire and telephone declaring its desire to be assigned the work of unloading the ship.

When the S. S. Columbia docked on February 19, 1964, the Respondent Locals placed pickets at the gates of the Pittsburg Works, carrying signs with legends protesting the assignment of the unloading work to the Steelworkers, and passing out leaflets to the employees presenting the Respondents' views on the disputed work assignment. The pickets remained at the gates for the duration of the unloading of the vessel. Thereafter, the S. S. Columbia was unloaded in April, May, and July by employees represented by the Steelworkers, and each time the Respondents picketed. The May landing of the S. S. Columbia was delayed five days because it was met by a picket boat of the Respondent as it entered San Francisco Bay. When the vessel did land, on May 13, 1964, the Employer's gates were the scene of mass picketing which prevented some of the Employer's employees, as well as employees of its contractors performing work on the premises, from going to work at the Pittsburg Works. The mass picketing was discontinued as a result of a state court proceeding.

IV. *Contentions of the Parties*

1. *The Employer* contends that the work of unloading the S. S. Columbia should be awarded to its employees to whom it has been assigned, because the work is a phase of the manufacturing process, and the employees engaged in such work should be included in the production and maintenance unit for which the Steelworkers is the certified, contract representative. The Employer further contends that steelworkers are better qualified to perform the work than members of the Respondents, that the work is safely and more efficiently performed by its own employees, and that it is the area practice that such work be performed by an employer's own employees.

2. *The Respondents* contend that the unloading of ships with "whirley" cranes is typically and traditionally longshoremen's work and has been so recognized by the Board in cases such as *International Longshoremen's and Warehousemen's Union (American Mail Line)*, 144 NLRB 1432; *International Longshoremen's and Warehousemen's Union (Albin Stevedore Co.)*, 144 NLRB 1443; and *International Longshoremen's and Warehousemen's Union (Howard Terminal)*, 147 NLRB No. 42. Respondents contend they have jurisdiction over this work on the basis of their constitution covering all unloading of ships, and that the work can be more safely performed by longshoremen. They point out that all unloading at the Pittsburg Works dock prior to 1964 was done by longshoremen, and contend that the work is not covered by the Steelworkers' certification or contract.

3. *The Intervenor* made substantially the same contentions as the Employer, and asserted, in addition, that award of the disputed work to members of the Respondents would result in a loss of jobs by members of Steelworkers but an award to Steelworkers would not result in any job loss for longshoremen as they have never done this work.

V. *Applicability of the Statute*

Before the Board may proceed to a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.

As described more fully above, representatives of the Respondent International Union notified both the Employer and the Steelworkers of its claim to unload the S. S. Columbia at the Employer's Pittsburg Works dock and inform the Steelworkers of its intent to picket if the work were assigned to members of the Steelworkers. The Respondent Locals' pickets were stationed at the plant gates during each of the ship's four calls with signs, and leaflets were distributed protesting unloading of the cargo by Steelworkers. In May the Respondent Locals met the S. S. Columbia in San Francisco Bay with a picket boat thereby delaying its landing, and the Respondent Locals' use of mass picketing prevented employees of the Employer and of its contractors from working. The picketing took place only during the times the ship was in port being unloaded by the members of the Steelworkers. In these circumstances, we find reasonable cause to

believe that Respondents caused or were responsible for the work stoppages which occurred in May.

We further find that an object of the stoppages was to force or require the Employer to assign the disputed work to longshoremen represented by Respondents, rather than to employees represented by Steelworkers. We conclude, therefore, on the basis of the entire record, that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and that the dispute is properly before the Board for determination under Section 10(k) of the Act.[6]

VI *The Merits of the Dispute*

As stated in the *J. A. Jones case*,[7] we shall, pursuant to the Supreme Court's *C.B.S.* decision[8] determine in each case presented for resolution under Section 10(k) of the Act the appropriate assignment of the disputed work only after taking into account and balancing all relevant factors.

In the instant matter, the parties have urged, and we have considered, many factors as relevant to the Board's determination of this dispute. Some of these factors weigh in favor of an award to longshoremen, some favor an award to steelworkers.

The Respondents in their constitution assert jurisdiction over "all workers employed in the loading and

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[6] *Local 991 International Longshoremen's Association, AFL-CIO, et al. (Union Carbide Chemical Company, Division of Union Carbide Corporation)*, 137 NLRB 750.

[7] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Co.)*, 135 NLRB 1402.

[8] *N. L. R. B. v. Radio and Television Broadcasting Engineers Union, et al. (Columbia Broadcasting System)*, 364 U. S. 573.

unloading of vessels, and operations incidental to such loading and unloading." Moreover, the unloading of ships on the Pacific Coast is traditionally performed by longshoremen. However, this practice does not appear to be clearly established with regard to the unloading of cargo from a ship, where both the ship and cargo are owned by an employer, at a dock also owned by that employer and located on its premises, as in the instant case.[9]

The work in dispute is a new operation. Steel billets had never been unoladed from a ship at the Pittsburg Works dock prior to 1964, all such billets having been manufactured on the premises or received in and unloaded from railroad cars and trucks. While members of the Respondents had at one time been employed by a common carrier subsidiary of the Employer in unloading a different type of cargo from ships owned by the subsidiary, they have received no such employment at this dock for the past 8 years, and the carrier is no longer a subsidiary of the Employer. Employees represented by Steelworkers, on the other hand, have been unloading the Employer's ship at the

[9]The cases relied on by the Respondents in support of its contention that the Board has recognized its claim to this type of work, cited in paragraph IV above, are distinguishable because, *inter alia*, those cases involved unloading ships at commercial docks for shipping and stevedoring companies which were members of the Pacific Maritime Association. The Employer herein is not a member of PMA, and the latter's collective-bargaining agreement with the Respondents recognizes an exception for the type of work involved in the instant case. See the Pacific Coast Longshore Agreement, 1961-1966, Sec. 1.46, page 5, which provides as follows: "Where a nonmember of the Association has control over the cargo at its premises or on its vessel, such nonmember's regular employees may perform work assigned to longshoremen herein while such cargo is out of the control of any member."

Pittsburg Works dock ever since that operation began, and have done it safely and to the Employer's satisfaction. Award of the work to Respondents' members would therefore result in a further loss of jobs to Steelworkers' members, who lost 124 jobs when the billet-manufacturing operation was closed; whereas an award to Steelworkers' members would not entail a job loss to longshoremen because they have never performed this work.

The Respondents have no contract with the Employer. Although the Steelworkers is the certified, contract representative of the Employer's production and maintenance employees, neither its certification nor its contract specifically cover the work of unloading ships with "whirley" cranes, jobs which came into existence after the certification was issued and after the current contract was executed. However, the job descriptions of the disputed work are substantially identical with those of other jobs included in the production and maintenance unit covered by the Steelworkers' contract. Moreover, although longshoremen on the Pacific Coast are experienced in the unloading of ships with "whirley" cranes, the Employer's employeees are experienced in the similar operation of unloading trucks and railroad cars with large rotating cranes, and in lifting the extremely heavy steel billets involved, whereas the longshoremen members of these Respondents are not.

With respect to efficiency and economy of operation longshoremen would have to be transported a considerable distance for intermittent employment performing only work directly related to the unloading of the

ship during its infrequent visits. On the other hand, the unloading of the ship merely complements the work of the steelworkers, as they are permanently and regularly employed on the premises in loading and unloading railroad cars on the same dock with the same cranes, and loading, unloading, and moving steel at other locations on the Employer's premises.

In these circumstances, the Respondents' claim, based for the most part on its general jurisdiction, is outweighed by the factors presented above which favor the Steelworkers' claim. On the merits, therefore, we find that there are overriding factors in support of United States Steel Corporation's assignment of the disputed work to employees in its existing production and maintenance unit represented by the Steelworkers. Accordingly, we shall award the work in the instant case to the production and maintenance employees represented by the Steelworkers rather than to longshoremen represented by the Respondents. In making this determination, we are assigning the disputed work to employees represented by the Steelworkers' but not to that labor organization or its members.[10]

VII *Determination of Dispute*

Upon the basis of the foregoing findings, and the entire record in the case, the Board makes the following determination of dispute, pursuant to Section 10(k) of the Act:

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[10]In reaching this determination, Member Leedom does not deem the loss-of-job question a material consideration. See his dissent in *Philadelphia Typographical Union, Local No. 2 (Philadelphia Inquirer)*, 142 NLRB at 44-47.

1. Employees employed in the production and maintenance unit at the United States Steel Corporation's Pittsburg Works, Pittsburg, California, plant, currently represented by Local No. 1440, United Steelworkers of America, AFL-CIO, are entitled to unload ships at the Employer's Pittsburg Works' dock.

2. Accordingly, International Longshoremen's & Warehousemen's Union, and Locals 6, 10, 34, 54, and 91, affiliated with International Longshoremen's and Warehousemen's Union, are not and have not been lawfully entitled to force or require United States Steel Corporation to assign the unloading of ships at the Employer's docks at Pittsburg, California, to members of said organizations.

3. Within 10 days from the date of this Decision and Determination of Dispute, Longshoremen's & Warehousemen's Union, and Locals 6, 10, 34, 54, and 91, all affiliated with International Longshoremen's and Warehousemen's Union, shall notify the Regional Director for the Twentieth Region, in writing, whether or not they will refrain from forcing or requiring United States Steel Corporation to assign the work in dispute to their members rather than to employees of the Employer.

Dated, Washington, D.C.

Boyd Leedom, Member
John H. Fanning, Member
Howard Jenkins, Jr., Member
National Labor Relations Board

(Seal)

Appendix C-1

United States of America
Before the National Labor Relations Board

International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union and United States Steel Corporation	Case No. 20-CD-136

ORDER CLARIFYING DECISION AND DETERMINATION OF DISPUTE

On December 15, 1964, a Decision and Determination of Dispute[1] was issued by a three-member panel of the Board (Members Leedom, Fanning and Jenkins) in a Section 10(k) proceeding, finding that there was reasonable cause to believe that Respondents, International Longshoremen's & Warehousemen's Union, and its Locals 6, 10, 34, 54, and 91, had violated Section 8(b)(4)(D) of the Act, and awarding the disputed work to employees represented by United Steelworkers of America and its Local No. 1440.

On December 24, 1964, the Respondents filed with the Board a Petition for Clarification of Decision and Determination of Dispute in which they requested that the language of Section VII entitled *Determination of Dispute* be made more explicit. On December 28, 1964, the Employer filed a letter in opposition to Respondents' petition.

[1] 150 NLRB No. 17.

The Board has considered the Respondent's petition and the Employer's opposition thereto, and has decided to clarify the language in Section VII *Determination of Dispute* as requested in the Respondents' petition. Accordingly,

It is Hereby Ordered that paragraphs numbered 1 and 2 of Section VII *Determination of Dispute* be modified to read, respectively, as follows:

> 1. Employees employed in the production and maintenance unit at the United States Steel Corporation's Pittsburg Works, Pittsburg, California, plant, currently represented by Local No. 1440, United Steelworkers of America, AFL-CIO, are entitled to unload the Employer's cargo from the Employer's ships at the Employer's Pittsburg Works' dock.
>
> 2. Accordingly, International Longshoremen's & Warehousemen's Union, and Local 6, 10, 34, 54 and 91, affiliated with International Longshoremen's & Warehousemen's Union, are not and have not been lawfully entitled to force or require United States Steel Corporation to assign the unloading of the Employer's Cargo from the Employer's ships at the Employer's dock at Pittsburg, California, to members of said organization.

Dated, Washington, D.C., January 11, 1965

By direction of the Board:

George A. Leet
Associate Executive Secretary

Appendix D

United States Court of Appeals
for the Ninth Circuit

National Labor Relations Board, Petitioner, vs. International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54 and 91, International Longshoremen's & Warehousemen's Union, Respondents.	No. 21,299

(Filed Jun 8 1967 Wm. B. Luck, Clerk)

DECREE

Before: Jertberg and Merrill, Circuit Judges; and Taylor, District Judge.

This Cause came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order issued by it against the Respondents, International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union, and their officers, agents, and representatives, on July 9, 1965. The Court heard argument of respective counsel on April 12, 1967, and has considered the briefs and transcript of record filed in this cause. On May 15, 1967, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's order. In conformity therewith, it is hereby

Ordered, Adjudged And Decreed by the United States Court of Appeals for the Ninth Circuit that

Respondents, International Longshoremen's & Warehousemen's Union; and Locals 6, 10, 34, 54, and 91, International Longshoremen's & Warehousemen's Union, and their officers, agents, and representatives, shall:

1. Cease and desist from engaging in, or inducing or encouraging employees of United States Steel Corporation or other persons engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or threatening, coercing, or restraining United States Steel Corporation or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require United States Steel Corporation to assign the work of unloading the Employer's cargo from the Employer's ships at the Employer's dock at Pittsburgh, California, to employees represented by the Respondents rather than to employees employed in the production and maintenance unit at the United States Steel Corporation's Pittsburgh Works, Pittsburgh, California, plant, represented by Local No. 1440, United Steelworkers of America, AFL-CIO, unless United States Steel Corporation is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

2. Take the following affirmative action which the Board has found will effectuate the policies of the National Labor Relations Act, as amended.

(a) Post in conspicuous places at their business offices, meeting halls, and at all places where the Respondents normally post notices for members, copies of the attached notice marked "Appendix." Copies of said notice, to be furnished by the Regional Director for Region 20, (San Francisco, California), shall, after being duly signed by authorized representative of the Respondents, be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the aforesaid Regional Director, for posting by United States Steel Corporation and all other persons involved in this proceeding, who are willing, at all locations upon their or other premises where notice to employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 10 days of the date of this Decree, what steps the Respondents have taken to comply herewith.

Endorsed, Decree Filed and Entered

/s/ Wm. B. Luck
Wm. B. Luck
Clerk

[A True Copy
Attest:
Wm. B. Luck
Clerk]

Appendix E

NATIONAL LABOR RELATIONS ACT, as amended:

Section 8(b)(4)(D):

It shall be an unfair labor practice for a labor organization or its agents . . .

(4) to (i) engage in, or to induce or encourage any individual employed by any person engaged in commerce . . . to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce or restrain any person engaged in commerce . . .; where in either case an object thereof is . . .

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft or class . . .

* * * * *

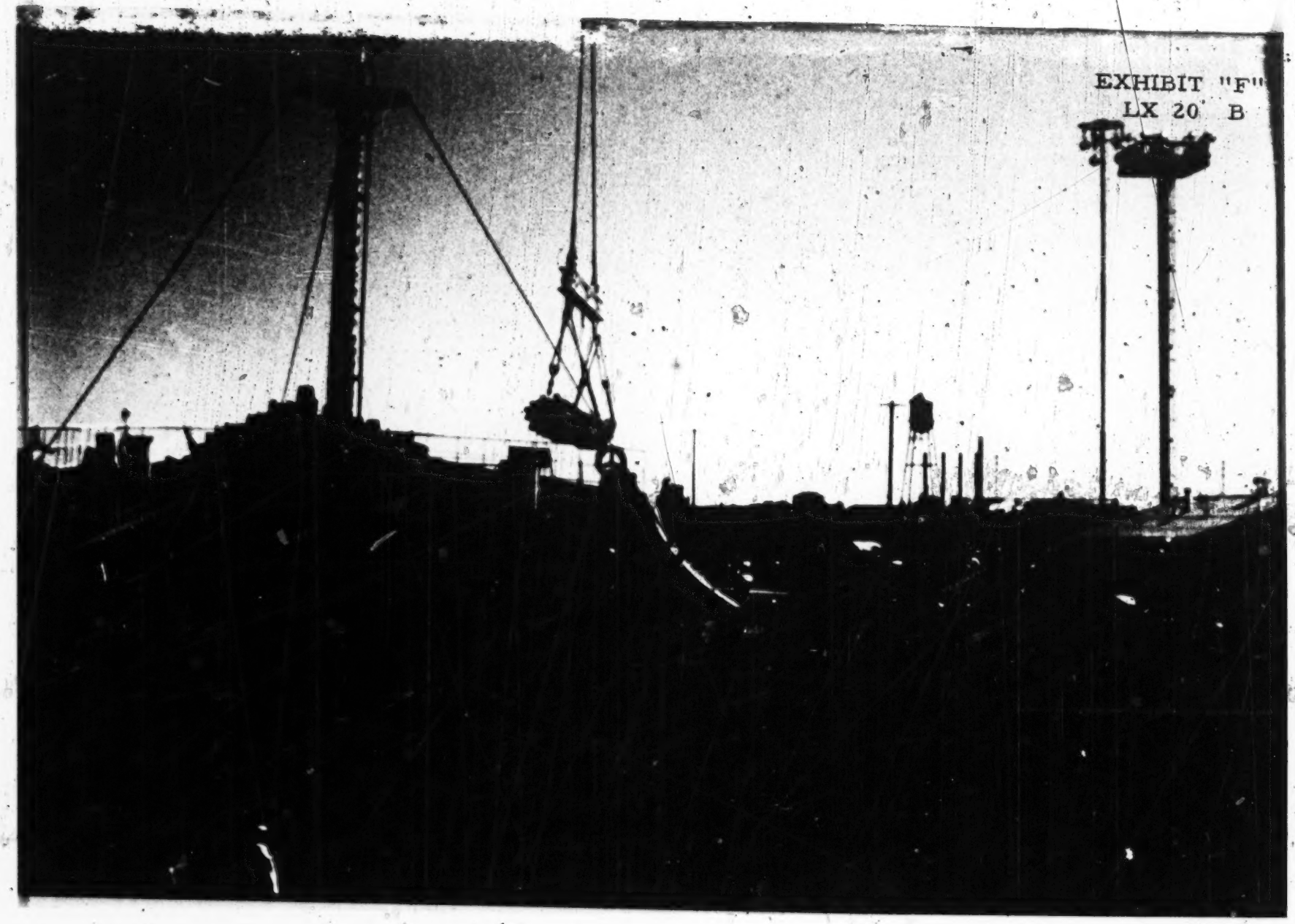
Section 10(k):

Whenever it is charged that any person has engaged in unfair labor practice within the meaning of paragraph (4)(D) of Section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen . . .

* * * * *

Section 10(e):

The Board shall have power to petition any court of appeals of the United States . . . wherein the unfair labor practice in question occurred . . . for the enforcement of such order . . . The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive . . . Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review . . . by the Supreme Court of the United States upon a writ of certiorari . . .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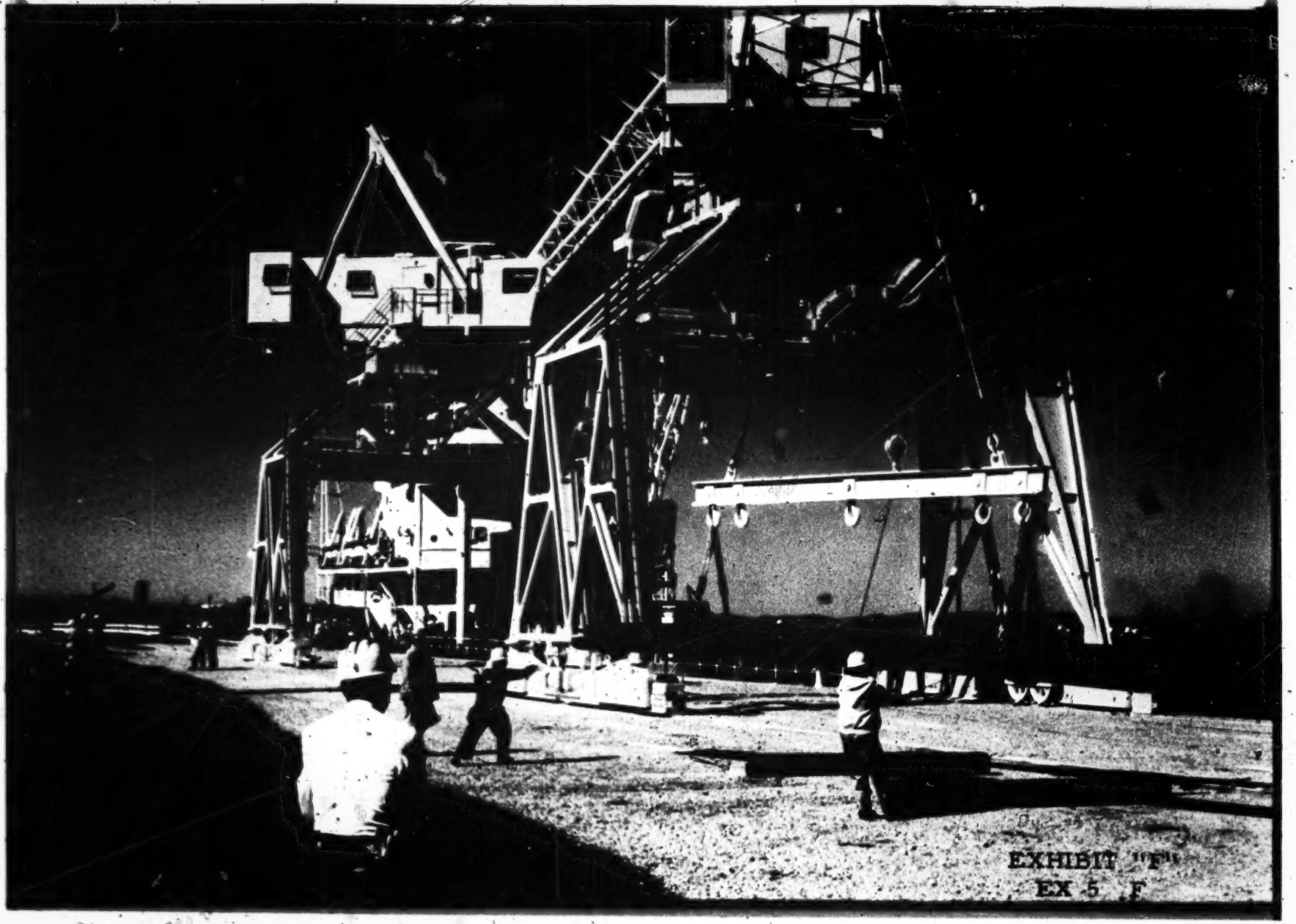
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